



U.S. Department
of Transportation
Federal Transit
Administration

400 Seventh St., S.W.
Washington, D.C. 20590

OCT 30 2006

Mr. Steve Pixley, President
Tecumseh Trolley and Limousine Service, Inc.
8514 Pennington Road
Tecumseh, Michigan 49286

Mr. Steve Tobis, Director
September Winds Motor Coach, Inc.
c/o CCD Travel Inc.
5265 Tractor Road
Toledo, Ohio 43612

Re: *September Winds Motor Coach, Inc. v. Toledo Area Regional Transit Authority*,
Charter Docket Number 2004-16; *Tecumseh Trolley & Limousine Service, Inc. v.*
Toledo Area Regional Transit Authority, Charter Docket Number 2004-18

Dear Messrs. Pixley and Tobis:

As you know, on February 25, 2005, Mr. Joel Ettinger—the Region 5 Regional Administrator for the Federal Transit Administration (FTA) at that time—issued a charter service decision in response to complaints filed by your two companies, September Winds Motor Coach, Inc. (“September Winds”) and Tecumseh Trolley & Limousine Service, Inc. (“Tecumseh Trolley”). Both complaints alleged that the Toledo Area Regional Transit Authority (“TARTA”) had provided charter service for the Applebutter Festival in Grand Rapids, Ohio, in October 2004 in violation of the FTA charter rule at 49 C.F.R. Part 604, and indeed, Mr. Ettinger’s decision found that service to have been a violation of the rule. Previously, moreover, FTA had issued cease-and-desist orders to TARTA, based on a number of complaints over fifteen months, but TARTA ignored those orders and continued to provide prohibited charter service. As a result, in April 2004 FTA cut off TARTA’s ability to drawdown Federal financial assistance under FTA grants. As a condition to restoring the flow of FTA funds, TARTA agreed to a remediation plan by which it would seek FTA prior approval for any proposed charter service by TARTA.

To reiterate, Mr. Ettinger’s February 25, 2005, decision found TARTA in violation of the charter rule and the terms of the remediation plan; FTA had approved TARTA’s lease of buses to Lakefront Lines, Inc., (“Lakefront”) for the October 2004 Applebutter Festival in reliance on communications to FTA by TARTA that Lakefront did not have sufficient capacity to provide the service itself, which, upon investigation, proved not to have been the case. Thus, in his February 25, 2005, decision, Mr. Ettinger recommended that

TARTA *voluntarily* disgorge its \$6,880 fee to the complainants—your two companies. TARTA appealed from Mr. Ettinger's decision, but on December 21, 2005, in my capacity as FTA's Acting Deputy Administrator, I affirmed Mr. Ettinger's decision, given that TARTA had not presented any new matters of fact or points of law not known or available during the investigation of the original complaints. And as you know, by letter of January 4, 2006, TARTA informed FTA of its refusal to disgorge its fee.

Please understand, Mr. Ettinger recommended a *voluntary* disgorgement of TARTA's fee to the complainants because FTA lacks any authority to order a public transportation agency to pay fees to private charter operators. FTA's only means of enforcement of its charter regulation is its statutory authority to withhold Federal financial assistance from a grant recipient pursuant to 49 U.S.C. § 5323(d). I well recognize your frustration with TARTA's refusal to heed Mr. Ettinger's recommendation—and TARTA's provision of prohibited charter service on a number of other occasions—but FTA cannot compel TARTA to remit that particular fee to your companies.

Let me note that currently, FTA is shepherding negotiations amongst public transportation agencies, private charter operators, and other stakeholder members of the Charter Bus Negotiated Rulemaking Advisory Committee ("CBNRAC"), which may well lead to several amendments to FTA's charter service regulation at 49 C.F.R. Part 604. FTA formed this CBNRAC in accordance with the directive of the Conference Report accompanying the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub.L. 109-59, Aug. 10, 2005; "SAFETEA-LU"), and I serve as the *Designated Federal Official* for the CBNRAC. In pertinent part, SAFETEA-LU amended the charter service statute, 49 U.S.C. § 5323(d), to empower FTA to withhold Federal funding in an amount FTA "considers appropriate" if it finds "a pattern of violations" of a grantee's charter service agreement or the FTA charter bus regulation. Obviously, the TARTA violation that was the subject of your complaint preceded the enactment of SAFETEA-LU. Recently, however, FTA invoked this new provision of 49 U.S.C. § 5323(d) to impose a significant penalty on an FTA grantee in the matter of *American Bus Association v. Akron Metro Regional Transit Authority*, Charter Docket No. 2005-06. I am enclosing a copy of that decision, for your interest.

Sincerely,



for David B. Horner
Chief Counsel

Enclosure

cc: Mr. James K. Gee, General Manager
Toledo Area Regional Transit Authority
1127 West Central Avenue, P.O. Box 792
Toledo, Ohio 43697

Joan H. Rife, Esq.
Two Maritime Plaza
Toledo, Ohio 43604

Edward J. Gill, Jr., Esq.
Thompson Coburn L.L.P.
1909 K Street, N.W., Suite 600
Washington, D.C. 20006-6900

Elizabeth Martineau, TCC-20
Nancy Ellen Zusman, TRO-05
Paula Schwach, TRO-07